

BEFORE THE
Federal Communications Commission
WASHINGTON, DC 20554

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MAY 9 1997

FEDERAL COMMUNICATIONS COMMISSION
Office of Self-Regulation

In the Matter of)

Revision of Part 22 and Part 90 of the
Commission's Rules to Facilitate
Future Development of Paging Systems)

WT Docket No. 96-18

Implementation of Section 309(j)
of the Communications Act - -
Competitive Bidding)

PP Docket No. 93-253

**OPPOSITION AND COMMENTS
OF ARCH COMMUNICATIONS GROUP, INC.**

Pursuant to Section 1.429 of the Commission's rules, 47 C.F.R. § 1.429, Arch Communications Group, Inc. ("Arch"),¹ by its attorneys, submits the following comments in response to petitions for reconsideration filed in the above-referenced dockets.

**I. THE COMMISSION SHOULD ALLOW INCUMBENTS TO USE
FORMULAS RATHER THAN TABLES IN POST-AUCTION LICENSING**

Arch filed a Petition for Partial Reconsideration and Request for Clarification ("Petition") of the *Second R&O*² on April 11, 1997. Although Arch concurred in the Commission's decision to use the fixed distance tables set forth in Section 22.537 of the Commission's rules for purposes of establishing an incumbent's protected interfering

¹ Arch is a leading provider of paging services with over 3 million pagers currently in service. Arch operates in more than 40 states, and in 80 of the 100 largest markets in the United States.

² *In the Matter of Revision of Part 22 and Part 90 of the Commission's Rules to Facilitate Future Development of Paging Systems, Implementation of Section 309(j) of the Communications Act - - Competitive Bidding*, WT Docket No. 96-18 and PP Docket No. 93-253, Second Report and Order and Further Notice of Proposed Rulemaking, 62 Fed. Reg. 11616 (1997) ("*Second R&O*").

contours for 931 MHz and exclusive 929 MHz channels prior to auction, the company expressed concern that using these tables for post-auction licensing will lead to the unintended result of preventing incumbents from fully serving their protected areas, thereby causing a possible disruption of service to customers.

Arch's concern stems from the fact that paging operators routinely need to relocate transmitters because of damage to an existing site or loss of a lease. If the composite contours of the relocated facility are calculated using the fixed distance tables, they would appear to encroach upon the market area licensee's protected area -- even in situations where the relocated facility is near the original site.

To remedy this problem, Arch urged the Commission to allow incumbents, post auction, to use modified formulas based on a particular signal's actual propagation characteristics. Arch specifically recommended that the Commission consider adopting the modified formulas devised by Comp Comm, Inc. ("Comp Comm").³ This would allow an incumbent to make necessary modifications to its system post auction without sacrificing service to the public or encroaching upon the market area licensee's white space.

In its Petition for Reconsideration and Clarification, ProNet, Inc. ("ProNet") also asked the Commission to extend to incumbents the flexibility to use formulas in making post-auction modifications to their systems. While Arch advocated adoption of prototype formulas proposed by Comp Comm, ProNet recommended the adoption of a formula

³ Arch Petition at pp. 4-5.

employing a median field strength of 21 dBuV/m.⁴ Arch continues to believe that the prototype formulas proposed by Comp Comm more accurately reflect the reliable service contours of 931 MHz and 929 MHz facilities;⁵ however, should the Commission decline to adopt the Comp Comm formulas, Arch urges the Commission to adopt the 21 dBuV/m formula, which would at least provide some flexibility to incumbents to make internal modifications. If the Commission does, in fact, adopt the 21 dBuV/m formula proposed by ProNet, the Commission should be prepared to resolve cases of interference because the formula underpredicts real world signal strength, thereby subjecting co-channel licensees to interference.

II. THE COMMISSION SHOULD MODIFY ITS GEOGRAPHIC AREA AUCTION PROPOSALS TO DETER SPECULATION

Arch also requested in its Petition that the Commission take several actions to minimize the harmful effects of speculators in paging auctions. Arch asked that the Commission exempt from auction those paging channels on which incumbents can certify that 70 percent or more of a market's population is encompassed by the incumbents' existing service contours on these channels.⁶ Such an exemption from auction for highly encumbered markets found widespread support among the petitioners.⁷

⁴ ProNet Petition at pp. 17-18.

⁵ Arch also points out that if the Commission adopts the Comp Comm formulas, those incumbents which have utilized the 21 dBuV/m formula to make modifications to their system during the pendency of the paging market area licensing proceeding should be allowed to conform their service and interference contours to those created using Comp Comm's formulas.

⁶ Arch Petition at p. 7.

⁷ See Petitions of PCIA at pp. 5-6, PageNet at pp. 4-6, and Metrocall at p. 11.

Arch also requested that the Commission require potential bidders to specify in their short-form application each license in which they may be interested, and adopt an upfront payment scheme which requires applicants to pay a modest sum for each license specified in their short-form application.⁸ Similar proposals were made by numerous other petitioners.⁹

III. NATIONWIDE LICENSEES SHOULD BE EXCLUDED FROM AUCTION

One petitioner raised the issue of the Commission's exemption from auction for licensees that have qualified for nationwide exclusivity.¹⁰ The law firm of Blooston, Mordkofsky, Jackson & Dickens ("Blooston") criticizes the Commission for failing to adequately explain why holders of nationwide exclusivity are exempt from auction.¹¹ Blooston's arguments are without merit.

⁸ Arch Petition at pp. 7-8.

⁹ See Petition of PageNet at pp. 10-11 (regarding the need to specify specific markets on the short-form) and Petitions of PageNet at p. 12 and PCIA at pp. 10-13 (regarding the need for an upfront payment on each license on which an applicant plans to bid).

¹⁰ Arch notes that Mobile Telecommunications Technologies Corp. ("MTel") has filed a Petition for Partial Reconsideration ("MTel Petition") requesting reconsideration of the Commission's denial of nationwide exclusivity to MTel on frequency 931.4375 MHz. MTel's Petition does not seek to overturn the award of nationwide exclusivity to other licensees (including Nationwide 929.8875 LLC (the "LLC"), an entity jointly owned by Arch and AirTouch), and Arch understands that MTel has no objection to the retention of nationwide exclusivity by the LLC. However, MTel's Petition does question whether the Commission may have treated similarly situated parties in a different manner. While Arch can perceive differences in the likely expectations concerning the prospects for nationwide exclusivity between the 931 MHz and 929 MHz channels, Arch does not object to MTel being granted exclusivity on frequency 931.4375 MHz.

¹¹ See Blooston Petition at pp. 5-6.

The Commission's auction authority is limited only to those situations in which mutually exclusive applications are accepted for filing.¹² For those frequencies on which the Commission has designated an incumbent as having nationwide exclusivity, there can be no competing applications, thereby precluding mutual exclusivity. Section 309(j)(1) thus bars the Commission from extending competitive bidding to these channels.

Blooston appears to ask the Commission to remove the exclusivity rights of nationwide licensees. The Commission properly found, however, that it would not serve the public interest or be fair to take away exclusivity rights that nationwide licensees previously have earned.¹³ Indeed, any contrary finding would have been inconsistent with specific directives set forth by Congress in the Omnibus Budget Reconciliation Act of 1993.¹⁴ Congress stated therein that the Commission's authority to use competitive bidding should not "be construed to relieve the Commission of the obligation in the public interest to continue to use engineering solutions, negotiation, threshold qualifications, service regulations, and other means in order to avoid mutual exclusivity in application and licensing proceedings."¹⁵ The Commission's current nationwide exclusivity rules meet this public interest standard because they prevent mutually exclusive situations. Blooston's suggestions that the Commission should take away nationwide exclusivity from those who have earned it would therefore contravene Congressional intent.

¹² See 47 U.S.C. 309(j)(1).

¹³ *Second R&O* at ¶ 50.

¹⁴ Pub. L. No. 103-66, Title VI, § 6002, 107 Stat. 387 (1993).

¹⁵ 47 U.S.C. 309(j)(6)(E).

IV. CONCLUSION

Arch requests that the Commission permit incumbents to use modified formulas based on a particular signal's actual propagation characteristics to make necessary modifications to their systems post auction. Arch also requests that the Commission modify its geographic auction proposals so as to deter possible speculation. Finally, Arch requests that the Commission reject the arguments raised in Blooston's Petition, and maintain the auction exemption currently applicable to nationwide licensees.

Respectfully submitted,

Arch Communications Group, Inc.

By:  Kathryn A. Zachem

WILKINSON, BARKER, KNAUER & QUINN
1735 New York Avenue, N.W.
Washington, D.C. 20006
(202) 783-4141
Its Attorneys

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CERTIFICATE OF SERVICE

I, Shelia L. Smith, a secretary at the law firm of Wilkinson, Barker, Knauer & Quinn, hereby certify that on this 9th day of May 1997, copies of the foregoing Opposition and Comments of Arch Communications Group, Inc. in WT Docket No. 96-18 were served on the following by first-class postage prepaid mail to:

Harold Mordkofsky
John A. Prendergast
Richard D. Rubino
Blooston, Mordkofsky, Jackson
& Dickens
2120 L Street, N.W., Suite 300
Washington, D.C. 20037

Katherine M. Holden
Wiley, Rein & Fielding
1776 K Street, N.W.
Washington, D.C. 20006

Judith St. Ledger-Roty
James J. Freeman
Paul G. Madison
Rebekah J. Kinnett
Kelley Drye & Warren LLP
1200 19th Street, N.W., Suite 500
Washington, D.C. 20005

Thomas Gutierrez
J. Justin McClure
Lukas, McGowan, Nace &
Gutierrez, Chartered
1111 Nineteenth Street, N.W.
Suite 1200
Washington, D.C. 20036

Jerome K. Blask
Daniel E. Smith
Gurman, Blask & Freedman
1400 16th Street, N.W.
Suite 500
Washington, D.C. 20036

Robert L. Hoggarth
Personal Communications Industry
Association
500 Montgomery Street, Suite 700
Alexandria, VA 22314

Frederick M. Joyce
Christine McLaughlin
Joyce & Jacobs, Attorneys at Law, LLP
1019 19th Street, N.W.
14th Floor, PH-2
Washington, D.C. 20036


Shelia L. Smith